MONTANA LEGISLATIVE HISTORY

Chapter 562 1999

Bill H 813 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	_____	____C	Hearing Date(s)	Mar 4	✓ C
No House Minutes Were Found	_____	____C		Mar 15	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	_____	____C		Mar 20	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 567

HOUSE BILL NO. 813

INTRODUCED BY HOUSE JUDICIARY COMMITTEE, SCULLY, CHAIRMAN

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Judiciary.
February 16, 1979	Committee recommend bill do pass. Report adopted.
February 17, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
	On motion, taken from third reading and referred to engrossing for Statement of Intent.
February 20, 1979	Correctly engrossed.
February 21, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Judiciary.
March 21, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979	Returned from second house. Concurred in as amended.

March 31, 1979	Second reading, amendments adopted.
April 2, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

~~House~~ BILL NO. 813

INTRODUCED BY House Judiciary Comm (J. Rush Hill CHAIRMAN)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE ROLES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE COUNTY WELFARE DEPARTMENT IN CONDUCTING INVESTIGATIONS, INCLUDING FINANCIAL INVESTIGATIONS, AND PREPARING REPORTS WHEN A MINOR IS PLACED IN A FOSTER HOME, CHILD CARE AGENCY, GROUP HOME, OR PRIVATE TREATMENT FACILITY PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN OR THE MONTANA YOUTH COURT ACT; PROVIDING FOR AN ADJUDICATORY AND A DISPOSITIONAL HEARING ON PETITIONS FOR ABUSED, NEGLECTED, OR DEPENDENT YOUTH AND PROVIDING FOR A COURT DETERMINATION OF THE FINANCIAL ABILITY OF PARENTS OR GUARDIAN TO PAY THE COST OF SUPPORTING A MINOR; AMENDING SECTIONS 41-3-105, 41-3-202, 41-3-401, 41-3-404 THROUGH 41-3-406, 41-5-522, AND 41-5-803, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by [Title 41, chapter 3] or [section 12].

Section 2. Section 41-3-105, MCA, is amended to read:

"41-3-105. Recovery from parents or guardian -- division between state and county. (1) In the event any recovery is made from the ~~parent or~~ parents or guardian of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from ~~a parent or~~ the parents, or guardian when a child is placed in a foster home, child care agency, group home, or private treatment facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected."

Section 3. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting -- maintenance of central registry on child abuse. (1) If from ~~said report it shall~~ appear a report filed under 41-3-201, it appears that the child suffered such injury or injuries or willful neglect, the a social worker shall conduct a thorough investigation into the home of the child involved, and into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the social worker ~~shall be~~ are relevant and material to the investigation. In conducting an investigation under this

HB 813 INTRODUCED BILL

section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care. If from the investigation it ~~shall appear~~ appears that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.

(2) The investigating social worker shall also furnish a written report to the department of social and rehabilitation services which shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting

hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or

commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

Section 5. Section 41-3-404, MCA, is amended to read:

"41-3-404. Hearing Adjudicatory hearing -- temporary disposition. (1) In a the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether ~~said~~ the youth is an abused, neglected, or dependent child and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the ~~child~~ youth, the whereabouts of the parents, guardian, or nearest adult relative, ~~the financial ability of any such parents or parent to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court pursuant to 41-3-405~~ and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, the doctor-patient privilege and husband-wife privilege ~~shall~~ do not apply to the extent any testimony relates to such matters.

 HB 813

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing, and order any necessary or required investigations. The dispositional hearing shall be scheduled as soon as practicable. The court may issue a temporary dispositional order, pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

Section 6. Section 41-3-405, MCA, is amended to read:

"41-3-405. Investigation of parents' or guardian's financial ability. ~~Whenever any petition is filed with the clerk of the district court alleging abuse, neglect, or dependency, the clerk of such court shall immediately deliver to the county welfare department of the county in which the petition is filed a copy of the petition with a notation thereon giving the day and time fixed by the court for hearing the petition.~~ (1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-404, the court shall issue an order directing the county welfare department of the county in which the petition was filed to conduct an investigation of

the financial status of the child's parents or guardian.

(2) Upon receipt of ~~such copy of petition~~ the order, the county welfare department shall make an investigation for the purpose of ascertaining ~~whether~~ the residence of the ~~parent or~~ parents, ~~if any,~~ or guardian of the child ~~live within the county~~ and the financial ability of ~~such parent or~~ the parents, ~~if any,~~ or guardian to pay the cost of supporting the child in a foster home, child care agency, group home, or private treatment facility, and A written report of the investigation shall ~~file~~ be filed with the clerk of ~~such~~ court, before the time fixed for the dispositional hearing, ~~a written report of such investigation. If, upon hearing, the court finds and determines that the child has parents or a parent who is financially able to pay a part or the whole of such cost and the child is ordered placed in a foster home, the court shall make an order requiring such parents or parent to pay such amount as the court may deem proper.~~

(3) A copy of the written report shall be provided to all parties to the proceeding before the time ~~filed~~ set for the dispositional hearing."

Section 7. Section 41-3-406, MCA, is amended to read:

"41-3-406. ~~Judgment~~ Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may

enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and

information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed to the Montana children's center, and if the center is unable to receive the child or if for any other reason it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the .... Judicial District.

On the .... day of ....., 19.., ..., minor of this county, was charged on the petition of ....., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The child's guardian is .....

HB 813

The child is in the custody of .....
It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ....., A.D. 19...

.....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section."

NEW SECTION. Section 8. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents or guardian is able to contribute to the support of the youth, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services. Upon a showing of change in financial ability, the court may modify the order.

Section 9. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in [sections 11 and 12].

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included

in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation."

Section 10. Section 41-5-803, MCA, is amended to read:

"41-5-803. Support of youth committed to a custodial agency. (1) When a youth under this chapter is committed by the court to custody other than that of his parents and no

provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county or the appropriate division thereof.

(2) ~~The~~ Whenever the provisions of [sections 11 and 12] do not apply, the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct such sum as will cover, in whole or in part, the support of such youth. In determining the amount the parents must pay, the court shall use the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payment for care of residents of institutions as those provisions and rules apply to the youth and parents before the court. If such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence or said cost may be collected in a civil action against the parent or parents."

NEW SECTION. Section 11. Financial investigation by county welfare department. (1) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a foster home, child care agency, group home, or private treatment facility and the department of social and rehabilitation services is responsible for all or part of

HB 813

the cost of such placement, the probation officer or the court shall notify the department of social and rehabilitation services and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardian. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or guardian to pay the cost of supporting the youth in the foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

NEW SECTION. Section 12. Order for financial support. (1) Upon receipt of a financial status report pursuant to [section 11], a court providing for disposition of a youth under 41-5-523 or 41-5-524 shall hold a hearing to determine

the ability of the youth's parents or guardian to contribute to the support of the youth. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents or guardian to contribute to the support of the youth.

(2) In addition to the report prepared under [section 11], any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents or guardian is able to contribute to the support of the youth, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services. Upon a showing of change in financial ability, the order may be modified.

-End-

Senator Turnage stated that it seems like a l to go around to where you want to be. Senator Tow that was his point - the wording is bad but the co is good. Senator Turnage stated that he was still convinced of that.

Mr. Smith said that one major reason for this page 3, one of the exceptions for consent on lines 14 and he said that the hospitals have taken a str sition not to release given information to anyone purpose unless it be by patient consent or by orde the court. He stated in hospital evaluations, uti tion reviews, etc., if they are properly controlle are in the public's best interest.

Senator Towe questioned that they do not allo release even if there is no personal identificatio volved. Mr. Smith said there is no way to release without personal identification - he said that it case-by-case study and not an accumulation - such as John Doe was kept in the hospital too long, c

Senator Turnage questioned "qualified person" who is in training or it is appropriate to his w an insurance adjuster - anybody else. He said if are talking about scientific research that is one but what about an insurance adjuster.

Senator Towe questioned why not the way the n privacy laws are written. Mr. Smith said that we want it to be mandatory, but he stated that if you it as an exception to the consent and defined it r down to the person making this evaluation, we woul object. Senator Turnage said if you can't personal dentify, what good is it going to do the insurance Dr. McMahan answered that the hospital has good ju both the hospital and the medical staff. He state it does in fact, help correct bad medical practice

There were no further questions or comments a hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 813:

This is an act to revise and clarify the role the Department of Social and Rehabilitation Se c

the County Welfare Department in conducting investigations, including financial investigations, and preparing reports when a minor is placed in a foster home, etc.

Representative Scully said that this addresses the problem of when parents, either voluntarily or involuntarily, place children in a facility of the state and then just forgets about paying for them. He gave an explanation of the bill.

There were no further proponents and no opponents.

Senator Towe questioned on page 2, lines 10 and 11, how does he define child care agency and wondered if Boulder would be a child care agency. Representative Scully said yes, it is and so is a group home, or even a foster home. He said that the point is any place the child may be placed after finding abuse, neglect or whatever and there would be a final responsibility if the parents were capable with the exception of in the case of a guardian.

Senator Towe said that on page 8, the investigation should not take place until after the dispostional hearing, and he stated that you take out the language on lines 13 through 18 authorizing the court, and he wondered where do you pick that up again. Representative Scully said there is a new section 8 on page 11 and on line 12 on page 7.

Senator Lensink stated that SB 301 would amend 41-3-401 and there may be some conflict.

Senator Towe questioned on page 12, if it is determined that the guardian should contribute and the guardian has substantial funds of his own, are you going to make it so the guardian pays out of his own funds. Representative Scully said no, you can clarify that anyway you wish.

Senator Towe questioned about taking a man's life savings and Representative Scully stated that if he abuses or neglects his children, he hoped that they would take all of his savings.

CONSIDERATION OF HOUSE BILL 820:

This is an act amending section 7-32-4152, MCA to provide that the members on a police commission hearing

Senator Lensink stated that we are going to legislate that there be mandatory sentences rather than give the discretion to the courts and said that the crux of the problem is not whether we should be tougher, but whether we take away the option of the courts.

Senator Towe moved that the bill be concurred in, as amended. He then withdrew his motion.

Senator Towe moved that the bill be amended on page 2, by striking lines 15 through 17 in its entirety. The motion carried unanimously.

Senator Towe then moved that this bill be not concurred in, as amended. The motion carried with Senators O'Hara and Galt voting no.

DISPOSITION OF HOUSE BILL 813:

This is an act to revise and clarify the roles of the department of social and rehabilitation services and the county welfare department in conducting investigations, including the financial investigations, and preparing reports when a minor is placed in a foster home, child care agency, group home, or private treatment facility relating to abused, neglected or dependent children, etc.

Joan Mayer from the Legislative Council offered amendments suggested for this bill. Senator Towe moved adoption of all the amendments. The motion carried unanimously.

Senator Towe moved that the bill be concurred in, as amended. He withdrew that amendment and offered a substitute motion that the bill be further amended on page 12, line 5, prior to amendments just offered and after word "services" insert, "to the extent deemed appropriate under the circumstances". The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The motion carried unanimously.

There being no further business, the meeting adjourned at 11:32 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

HB 813

1. Title, line 15.
Following: line 14
Strike: "GUARDIAN
Insert: "GUARDIANSI
ASSETS"

2. Page 2, line 2.
Following: "or"
Strike: "guardia"
Insert: "guardianship assets"

3. Page 2, line 4.
Following: "to"
Strike:
Insert: "parent or"
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"

5. Page 2, lines 17 through 19. wording of S.B-301
Following: "(1)" on line 17
Strike: remainder of line 17 through "to" on line 19
Insert: "Upon receipt of a report as required by 41-3-
that a"

4. Page 2, line 10.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"

6. Page 8, line 1.
Following: "or"
Strike: "guardian"
Insert: "the extent of guardianship assets"

7. Page 8, line 9.
Following: "or"
Strike: "guardian"
Insert: "the adequacy of the guardianship assets"

8. Page 11, line 19.
Strike: "or guardian"

9. Page 11, line 20.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to provide a contribution"

10. Page 12, lines 1 and 2.
Strike: "or guardian is"
Insert: "are"

Following: "parents" line 1

11. Page 12, line 2.
Following: "youth"
Insert: "or that the guardianship assets are adequate to provide a contribution"

12. Page 12, line 5.
Following: "service"

available from guardianship assets."

13. Page 15, line 6.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"

14. Page 15, line 13.
Following: "or"
Strike: "guardian"
Insert: "the adequacy of the guardianship assets"

15. Page 16, line 1.
Strike: "or guardian"

16. Page 16, line 2.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to provide a contribution"

17. Page 16, line 7.
Strike: "or guardian"

18. Page 16, line 8.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to provide a contribution"

19. Page 16, lines 14 and 15.
Strike: "or guardian is"
Insert: "are"

Leaving "parent" - line 14

20. Page 16, line 15.
Following: "youth"
Insert: "or that the guardianship assets are adequate to provide a contribution"

21. Page 16, line 18.
Following: "services."
Insert: "Payments required of a guardian may not exceed the funds available from guardianship assets."

STANDING COMMITTEE REPORT

March 20 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 813

Scully (Turnage)

Respectfully report as follows: That House Bill No. 813,
third reading bill, be amended as follows:

1. Title, line 15.
Following: line 14
Strike: "GUARDIAN"
Insert: "THE ADEQUACY OF GUARDIANSHIP ASSETS"

2. Page 1, line 25.
Following: "section"
Strike: "12"
Insert: "11"

3. Page 2, line 2.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"

EXPANS

(Continued)

Chairman.

STATE PUB. CO.

14. Page 15, line 6.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"

15. Page 15, line 13.
Following: "or"
Strike: "guardian"
Insert: "the adequacy of the guardianship assets"

16. Page 16, line 1.
Strike: "or guardian"

17. Page 16, line 2.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to provide a contribution"

18. Page 16, line 7.
Strike: "or guardian"

19. Page 16, line 8.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to provide a contribution"

20. Page 16, lines 14 and 15.
Following: "parents" on line 14
Strike: "or guardian is"
Insert: "are"

21. Page 16, line 15.
Following: "youth"
Insert: "or that the guardianship assets are adequate to provide a contribution"

22. Page 16, line 18.
Following: "services"
Insert: "to the extent considered appropriate under the circumstances"
Following: "."
Insert: "Payments required of a guardian may not exceed the funds available from guardianship assets."

And, as so amended,
BE CONCURRED IN

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

STATEMENT OF INTENT RE: HB 813

The provision of law dealing with abused, neglected, or dependent children; delinquent youths; and youths in need of supervision recognize the principle that the parents or guardian of the minor is responsible for a fair share of the costs of supporting the minor when the minor is placed in a foster home, group home, or other form of custodial care. This bill is intended to provide a mechanism for determining the parents' or guardians' share of financial support in those situations involving the department of social and rehabilitation services. Three guiding principles interact to provide the thrust of the legislation. First, the welfare of the minor is of utmost concern. The focus is on the youth, and the law is designed to provide an opportunity for the youth to realize his potential. Secondly, the traditional privacy and security of the family are to be preserved. Thirdly and referred to above, the parents or guardian of a minor is responsible for the financial support of the minor. These three principles can and often do conflict with one another. This bill addresses investigations as to the ability of the parents or guardian to bear all or part of the cost of supporting a youth taken from their custody and attempts to strike a balance between these three principles by requiring that an investigation by the county welfare department into matters of financial status may not be made until a court, or, in the case of an informal adjustment under the Youth Court Act, a probation officer places the child in a foster home, child care agency, group home, or private treatment facility.

Rules developed pursuant to authority granted under this bill should provide procedures that insure the parents or guardian have access to the reports and data developed by both the department of social and rehabilitation services and the county welfare department and that guarantee investigations into financial and other matters will not intrude into private lives beyond the level necessary to protect the welfare of the child.

First adopted by the HOUSE COMMITTEE ON JUDICIARY on February 16, 1979.

HB 813

HOUSE BILL NO. 813

INTRODUCED BY HOUSE JUDICIARY COMMITTEE, SCULLY, CHAIRMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE ROLES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE COUNTY WELFARE DEPARTMENT IN CONDUCTING INVESTIGATIONS, INCLUDING FINANCIAL INVESTIGATIONS, AND PREPARING REPORTS WHEN A MINOR IS PLACED IN A FOSTER HOME, CHILD CARE AGENCY, GROUP HOME, OR PRIVATE TREATMENT FACILITY PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN OR THE MONTANA YOUTH COURT ACT; PROVIDING FOR AN ADJUDICATORY AND A DISPOSITIONAL HEARING ON PETITIONS FOR ABUSED, NEGLECTED, OR DEPENDENT YOUTH AND PROVIDING FOR A COURT DETERMINATION OF THE FINANCIAL ABILITY OF PARENTS OR ~~GUARDIAN~~ THE ADEQUACY OF GUARDIANSHIP ASSETS TO PAY THE COST OF SUPPORTING A MINOR; AMENDING SECTIONS 41-3-105, 41-3-202, 41-3-401, 41-3-404 THROUGH 41-3-406, 41-5-522, AND 41-5-803, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by [Title 41, chapter 3] or [section ~~12~~ 11].

Section 2. Section 41-3-105, MCA, is amended to read:

"41-3-105. Recovery from parents or guardian GUARDIANSHIP ASSETS -- division between state and county. (1) In the event any recovery is made from the PARENT OR ~~parent---or~~ parents or ~~guardian~~ GUARDIANSHIP ASSETS of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from ~~a parent or~~ the parents, or ~~guardian~~ GUARDIANSHIP ASSETS when a child is placed in a foster home, child care agency, group home, or private treatment facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected."

Section 3. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting -- maintenance of central registry on child abuse. (1) ~~If from said report it shall appear~~ a report filed under 41-3-201, it appears that the UPON RECEIPT OF A REPORT AS REQUIRED BY 41-3-201 THAT A child suffered such injury or injuries or willful neglect, the a social worker shall conduct a thorough investigation into the home of the child involved, and into the circumstances surrounding the injury of the child, and into

all other ~~nonfinancial~~ matters which in the discretion of the social worker ~~shall be~~ are relevant and material to the investigation. ~~In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.~~ If from the investigation it ~~shall appear~~ appears that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.

(2) The investigating social worker shall also furnish a written report to the department of social and rehabilitation services which shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. ~~Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.~~

~~(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.~~ Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief

HB 0813/04

as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

Section 5. Section 41-3-404, MCA, is amended to read:

"41-3-404. Hearing Adjudicatory hearing -- temporary disposition. (1) In a the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether said the youth is an abused, neglected, or dependent child and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the ~~child~~ youth, the whereabouts of the parents, guardian, or nearest adult relative, ~~the financial ability of any such parents or parent to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court, pursuant to 41-3-405~~ and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to

abuse, neglect, or dependency, the doctor-patient privilege and husband-wife privilege shall do not apply to the extent any testimony relates to such matters.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing, and order any necessary or required investigations. The dispositional hearing shall be scheduled as soon as practicable. The court may issue a temporary dispositional order, pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

Section 6. Section 41-3-405, MCA, is amended to read:

"41-3-405. Investigation of parents' or guardian's financial ability. Whenever any petition is filed with the clerk of the district court alleging abuse, neglect, or dependency, the clerk of such court shall immediately deliver to the county welfare department of the county in which the petition is filed a copy of the petition with a notation thereon giving the day and time fixed by the court for hearing the petition. (1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-505, the court shall issue an order directing the county welfare department DEPARTMENT of the county in which the petition was filed to conduct an investigation of the financial status of the child's parents or guardian THE EXTENT OF GUARDIANSHIP ASSETS.

(2) Upon receipt of such copy of petition the order, the county welfare department shall make an investigation for the purpose of ascertaining whether the residence of the parent or parents, if any, or guardian of the child live within the county and the financial ability of such parent or the parents, if any, or guardian THE ADEQUACY OF THE GUARDIANSHIP ASSETS to pay the cost of supporting the child in a foster home, child care agency, group home, or private treatment facility, and A written report of the investigation shall file be filed with the clerk of such court, before the time fixed for the dispositional hearing, a written report of such investigation. If, upon hearing, the court finds and determines that the child has parents or a parent who is financially able to pay a part or the whole of such cost and the child is ordered placed in a foster home, the court shall make an order requiring such parents or parent to pay such amount as the court may deem proper.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time fixed set for the dispositional hearing."

Section 7. Section 41-3-406, MCA, is amended to read:

"41-3-406. ~~Judgment~~ Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed to the Montana children's center, and if the center is unable to receive the child or if for any other reason it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the .... Judicial District.

On the .... day of ....., 19.., ..., minor of this county, was charged on the petition of ....., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The child's guardian is .....

The child is in the custody of .....

It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ....., A.D. 19...

.....

Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section."

NEW SECTION. Section 8. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth OR THE ADEQUACY OF THE GUARDIANSHIP ASSETS TO PROVIDE A CONTRIBUTION. This question of financial ability

shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents or guardian-is ARE able to contribute to the support of the youth OR THAT THE GUARDIANSHIP ASSETS ARE ADEQUATE TO PROVIDE A CONTRIBUTION, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services TO THE EXTENT CONSIDERED APPROPRIATE UNDER THE CIRCUMSTANCES. PAYMENTS REQUIRED OF A GUARDIAN MAY NOT EXCEED THE FUNDS AVAILABLE FROM GUARDIANSHIP ASSETS. Upon a showing of change in financial ability, the court may modify the order.

Section 9. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in [sections 11 and 12].

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning

the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

HB 0813/03

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation."

Section 10. Section 41-5-803, MCA, is amended to read:

"41-5-803. Support of youth committed to a custodial agency. (1) When a youth under this chapter is committed by the court to custody other than that of his parents and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county or the appropriate division thereof.

(2) ~~The~~ Whenever the provisions of [sections 11 and 12] do not apply, the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct such sum as will cover, in whole or in part, the support of such youth. In determining the amount the parents must pay, the court shall use the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payment for care of residents of institutions as those provisions and rules apply to the youth and parents before the court. If such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as

provided by law for cases of desertion or failure to provide subsistence or said cost may be collected in a civil action against the parent or parents."

NEW SECTION. Section 11. Financial investigation by county welfare department. (1) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a foster home, child care agency, group home, or private treatment facility and the department of social and rehabilitation services is responsible for all or part of the cost of such placement, the probation officer or the court shall notify the department of social and rehabilitation services and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or ~~guardian~~ GUARDIANSHIP ASSETS. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or ~~guardian~~ THE ADEQUACY OF THE GUARDIANSHIP ASSETS to pay the cost of supporting the youth in the foster home, child care agency,

group home, or private treatment facility. A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

NEW SECTION. Section 12. Order for financial support. (1) Upon receipt of a financial status report pursuant to [section 11], a court providing for disposition of a youth under 41-5-523 or 41-5-524 shall hold a hearing to determine the ability of the youth's parents or ~~guardian~~ to contribute to the support of the youth OR THE ADEQUACY OF THE GUARDIANSHIP ASSETS TO PROVIDE A CONTRIBUTION. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents or ~~guardian~~ to contribute to the support of the youth OR THE ADEQUACY OF THE GUARDIANSHIP ASSETS TO PROVIDE A CONTRIBUTION.

(2) In addition to the report prepared under [section 11], any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents or guardian--~~is~~ ARE able to contribute to the support of the youth OR THAT THE GUARDIANSHIP ASSETS ARE ADEQUATE TO PROVIDE A CONTRIBUTION, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services TO THE EXTENT CONSIDERED APPROPRIATE UNDER THE CIRCUMSTANCES. PAYMENTS REQUIRED OF A GUARDIAN MAY NOT EXCEED THE FUNDS AVAILABLE FROM GUARDIANSHIP ASSETS. Upon a showing of change in financial ability, the order may be modified.

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